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THE ADMINISTRATION OF JUSTICE IN THE LAKE MICHIGAN WILDERNESS

THERE is a strange and quite unassembled story to be told of the part played by the administration of justice in the development of civilization out of the wilderness that surrounded the great Lake Michigan basin. This vast body of fresh water that now serves as an inter-communicating medium for great centers of modern life, was once only a great separating sea between long reaches of forests, infested with Indian tribes. Here and there were little clusters of cabins, inhabited by an adventurous people, who, within the span of two centuries, were submitted to the successive sways of three great nations,—France, England and the United States. Mostly there were to be heard only the wild sounds of the woods.

Two great factors worked to infuse into this wilderness the germ of the white man's manners and customs. One was the lure of discovery, coupled with the indomitable missionary zeal of the Jesuits, that served to place such names as Champlain, Marquette and La-Salle on the roll of history's heroes. The other was the lust for trade in fur, which the aborigines could so abundantly supply. Gradually the wooded spaces became dotted with such primitive centers as Sault Ste. Marie, Mackinac and Green Bay on the North, and Detroit, Vincennes and Kaskaskia on the South. These small communities, with their circumambient trading tribes, were slowly drawn into the current of history by their identity with the colonial systems of the old world powers of France and England.

First came New France—Canada—with the small beginnings of Champlain at Quebec, in 1603, stretching out its domain to include the territory now occupied by Ohio, Indiana, Illinois, Minnesota, Michigan, and Wisconsin. No other nation ever had such influence, religiously, commercially or socially, with the Indian tribes. While the impress of this ancient civilization brought into the wilderness a system of justice, quite philosophical and complete, yet it was utterly unfitted for the primitive conditions in which the valiant voyageurs and missionaries, on the outer edges, found themselves engulfed. The extent of the territorial claim was really enormously greater—from Arcadia to the Western extremity of Lake Superior and down the Mississippi River to the Gulf of Mexico.

Of course, until settlements appeared, this claim of dominion signified but little. It affected not at all the roving bands of savages which constituted at first the only inhabitants in human form. While centers of comparative civilization began to be reared in and around

Quebec, it was a long time before the voyageurs and Jesuits brought before Indian eyes the idea of a white man's religion and a white man's dominion in the region of Lake Michigan. It was a much longer time before this daring extension of territorial sway attempted anything like governmental form. And until there was attempt at government, there was necessarily no attempt at law.

The little mission of St. Ignace at Michilimackinac on the Southern point of the Straits, founded by Father Marquette in 1671, was one of the earliest typical factors in the development of the region we are contemplating. Following the priests, came an invasion of "coureurs du bois," mad with the lust for fur trade,—those picturesque bushrangers, who constituted one of the greatest menaces to law and order and yet were composed of a naturally law-abiding people—the French. With brandy as the chief medium of barter, the need for law and government followed fast. But the life of outlawry, with the remotely situated Mackinac as its base, rendered more than ordinarily difficult the establishment of any higher or more comprehensive law than that of the *lex talionis* in this outer wilderness. The coming of the garrisons, while marking the beginning of government, at first only seemed to irritate the prevailing lawlessness; for the discipline was weak, and the soldiers were allowed to join in the trade.

Listen to Father Carheil addressing the Intendant in the summer of 1702 from Mackinac:—

"Our missions are reduced to such extremity that we can no longer maintain them against the infinity of disorder, brutality, violence, injustice, impiety, impurity, insolence, scorn and insult, which the deplorable and infamous traffic in brandy has spread universally among the Indians of these parts."

The officers in command, he writes, "turn the fort into a place I am ashamed to call by its right name."

And yet, behind this disorder of the wilderness stood a fine system of jurisprudence, centered at Quebec, and known as the "Custom of Paris,"—or "Coutume de Paris." This was decreed by Louis XIV to be the Code of Law for Canada. It continued for much more than a hundred years,—even after France had relinquished her grasp,—because of the reluctance of the French inhabitants to recognize any other system. These "Customs" were an outgrowth of the feudal conditions in the tenth and eleventh centuries, and were based largely on the Roman Code of Theodosius in such fundamental matters

as titles, contracts, and domestic relations. There were about sixty of these customs in France, denominated as the Custom of Burgundy, Custom of Orleans, Custom of Brittany, Custom of Paris, etc. Why the Custom of Paris was chosen for New France, no reason is known. It consisted of sixteen titles, covering most of the rights and remedies adapted to the needs of a thickly settled center of civilization. Its fitness as a code of human conduct in a savage-infested wilderness may well be imagined, and but for the habit of the French to submit to authority of any kind, could not have endured.

Both before and after the adoption of this code, the basis of the social relation in France as well as in Canada, was a feudal system, which divided the people into seigneurs and habitants. Gentility and land-holding went together. Before the Custom of Paris was established in Canada, the seigneurs assumed and were allowed full power to decide all disputes among their vassals or habitants. The center of the system was the Intendant,—a sort of Royal Spy upon the conduct of the Governor, and styled in his commission “Intendant de la Justice, Police et Finances en Canada.” Apart from the quasi-judicial functions of the seigneurs, and the exercise of occasional discipline by the Governor or the Intendant, the only administration of justice was that of the rough and ready kind exercised under the trading companies, or through the instrumentality of the occasional garrisons. This was the situation at Michilimackinac, which post became in trade, religion and military affairs a sort of sub-station metropolis for this part of the wilderness.

The seigneurs were empowered to erect gallows and pillories, but the Intendant administered a kind of high-justice in cases between seigneurs and in criminal affairs, which was only occasionally invoked. “Middle” and “low” justice, so to speak, embracing all minor offences, was in the hands of the seigneurs, who were in reality a species of Justices of the Peace.

In the outer fringe of the outposts there were no seigneurs, no such thing as estates, and precious little justice, if we are to believe the wail of Father Carheil noted above.

In 1663 came the Custom of Paris, and the establishment at Quebec of the Superior Council, which at least presented a fixed forum for judicial action—as remote in spirit, however, as it was in practical effect, so far as the basin of Lake Michigan was concerned.

In as much as this constituted the law of the land for over a hundred years, however, some attention should be given to its operation.

The Superior Council,—first called Supreme, until it was recognized that the *Ultima Thule* of supremacy could only be the king, who

sat across the seas,—was composed of the governor, the bishop and five councillors chosen by them. The Intendant was soon added, and the appointment of the councillors was later made directly by the king. Legislative, judicial and executive power was vested in this body. In 1675 the number of councillors was increased to seven and in 1703 to twelve. They gave judgment in all civil and criminal causes that were brought before them, according to the Royal Ordinances and the Custom of Paris. Similarly the functions of registration belonged to this body, and all edicts, ordinances, and declarations relating to Canada had to be registered at Quebec before they became law.

The council had its Attorney General, who heard complaints and brought them before the council if he thought that necessary. There was a secretary who kept the registers, and huissiers, or official attendants. Sittings were had once a week, on Mondays.

The council was empowered to establish subordinate courts, or judges, throughout the domain—and, besides, the king appointed a judge of inferior jurisdiction for each of the three districts of Canada,—Quebec, Three Rivers, and Montreal. Each of these courts had its clerk and its Attorney General, under the Attorney General of the Superior Council at Quebec.

The Corporate Seigneur of Montreal continued to hold a feudal court, with his own Attorney General, clerk and huissier.

Then there was a bishop's court at Quebec to try causes within the province of the church.

It must not be forgotten that besides the participation of the Intendant in the Superior Council, he exercised the independent right to call any cause whatever before him for judgment, and had exclusive jurisdiction in cases that concerned the king, and those involving the relations of seigneur and vassal. From his judgments, as well as those of the Superior Council, there was no appeal except to the king,—and he and his council of state were very far away.

There would seem to be considerable room for conflict of jurisdiction under this system, but in the main, in the realms of middle and low justice, it is said,—in the ordinary local questions between the habitants,—the law on the whole was administered fairly, and the people in this respect were content.

The office of judge would seem to have been no sinecure, as the litigious disposition of the French, which the long winters helped to breed, found ample ground to feed upon in the uncertainties of boundaries and titles, and the certainty of gossip and quarrel.

Let us look in for a moment upon a Monday morning session of

the Superior Council at Quebec,—not that we should be very likely to find any aggrieved denizen of the distant Lake Michigan region there with his complaint,—but it was the center of the System of Justice to which he belonged. They sat at a round table, in the ante-chamber of the Governor's quarters in the Chateau St. Louis. At the head was the Governor, with the Bishop at his right, and the Intendant, the third in rank, but the greatest in power, at his left; and then the councillors in the order of their appointment, together with the Attorney General. They all wore their ordinary dress, including, with the exception of the Bishop, their swords. The sessions were far from harmonious, due to the long-standing jealousy between the Intendant and the Governor. The Intendant presided at the sessions, took votes, pronounced judgment, signed orders, called special meetings, and acted in short as chief justice. This much was settled by royal decree. There were constant complaints of neglect of official duties, due to the fact that the members of the Court were all more or less in trade, or busy with their farms. In spite of the great apparent power of the intendant, the probable trouble with the system lay in the fact that the Intendant had no force at his command to back up his decrees, and thus was at the mercy of the Governor,—a fatal flaw in any system of administering justice. His great protector, the King, was too far away, and his relations to that monarch were of too intimate and secret a nature to be enforced from across the seas. It took a year or more for a complaint to reach the King and be returned. And yet, theoretically, the Intendant was the ruling power in law over all Canada.

In the matter of dress as an aid to judicial dignity, there was much of the discussion then that rages today whether or not justice is aided by appropriate robes. The Intendant Meules was much fretted that the judges could not be arrayed in caps and gowns. He thought that it was extremely necessary in order to inspire respect that the members of the Council at least should wear the long black robes of France,—red on occasions of ceremony,—and so writes to the king. But none were provided and the scanty pay would not suffice for this kind of private embellishment. Then, too, it was not decent, he says, that the Superior Council should sit in the Governor's ante-chamber and be exposed to the noise, and even gibes, of the guards and valets. As the result of this complaint, an old brewery, at the foot of the rock, was finally bought and remodelled and became the Palace of the Intendant, or the Palace of Justice.

This impressiveness did not extend, however, to the inferior courts, for we are told that the Royal Judge for the District of Que-

bec was accustomed in winter, in order to save fuel, to hold his court by his own fireside.

A remark of the Intendant Meules in his letter to the Minister in 1685 sheds some light on the spirit pervading the administration of justice. "It is of very great consequence," he says, "that the people should not be left at liberty to speak their minds." With that cardinal principle underlying their civilization, it is difficult to see aught but a machine-made polity, entirely regulated from above. Beyond the reach of official control, as in the outer-fringe of the wilderness, it is easy to see how remote was the application of this system of justice to the individualism of the free life of outlawry that there prevailed, both in theory and in fact.

There is one case, however, that appears in a long communication from the Intendant Champigny to the King's Minister of Justice, dated July 3, 1698, that directly involves an inhabitant of our wilderness, *Sieur de la Mothe Cadillac*, while he was in command of the fort at Michilimackinac,— "*Missilimackinac*," as it is spelled. Cadillac was sued by two settlers, Moreau and Durand, who brought a petition before the Intendant at Quebec, claiming a share in the proceeds of certain goods which Cadillac had got them to convey for his benefit to Mackinac. The Intendant referred the case to arbitrators (a favorite procedure under the Custom of Paris) and rendered a decree on their finding in favor of the petitioners. The enforcement of this was promptly enjoined by Count Frontenac, the Governor. The Intendant attempts to have the case opened, but without avail; and then forwards all the papers across the sea for Kingly review. It cannot be said on reading the long communication of the Intendant that he was exactly an unprejudiced judge. He is filled with much wrath against Cadillac, on account of his impropriety in trading at all while in command of a Post, and neglects no opportunity to rub this in, and complains bitterly of what he calls Cadillac's chicanery in thwarting the judgment through Frontenac. He is terribly vexed, too, at the action of Frontenac, and the letter fairly groans with this grievance. The situation well illustrates the unfortunate mess that the dual jurisdiction of Intendant and Governor involved. I do not know what the result of this case was before the "King's Council of State."

In Parkman's, "*The Old Regime in Canada*," from which many of the facts here given in relation to the Superior Council are taken, some interesting instances are set forth of punishments inflicted by the Council. Because one Paul Dupuy had spoken to the effect that

it was a good thing that the English beheaded Charles I, he was found guilty of speaking ill of royalty in the person of the English King, and he was ordered to be led in his shirt, with a rope around his neck and torch in hand to the gate of the Chateau St. Louis, there to beg the King's pardon; then he was taken to the pillory and branded in the cheek with a *fleur-de-lis*, set in the stocks for half an hour, and then put in chains "till the information against him be completed."

Blasphemy must have been an awful thing under the ancient regime. For the first offense, a pecuniary fine, according to the possessions of the culprit and the enormity of the blasphemy. Repetitions for the second, third and fourth time meant a corresponding increase of the fine. For the fifth offense he was set in the pillory for five hours on all Sundays and feast days, in addition to a lusty fine. On the sixth occasion he was led to the pillory and his upper lip cut with a hot iron,—and on the seventh, the lower lip was cut. And if the oath was still continued, the tongue was cut out. One who heard blasphemy must report to the nearest judge in twenty-four hours, on pain of fine. No wonder the woods and open spaces were eagerly sought by the adventurous beyond the practical reach of these punishments.

For the offense of eating meat in Lent, the Bishop's court condemned a man to be tied three hours to a stake and then led to the chapel door to ask pardon on his knees of God and the King. On appeal to the Superior Council, this punishment was modified to a fine.

Those guilty of murder and felony were sometimes tortured before being strangled and the body exposed in an iron cage for months as a terrible warning. But, as Parkman states, "Canadian justice tried by the standard of the time, was neither vindictive nor cruel."

However, as has already been intimated, the system itself was very much at fault. It simply did not fit the environment. The attempt to transplant a section of French justice founded on feudalism and impose it upon a raw community, battling with the savage wilderness, was bound to fall short of its purpose, even if its administration was not honey-combed with internal friction, as was the case between the Intendant and the other administrative officers of government. Louis XIV recognized this quite early, but apparently nothing was done to remedy it, save to criticise and point out the trouble in its administration. The system was left to struggle on as best it might.

In 1682 the King writes to the Intendant :

"The greatest disorder which has hitherto existed in Canada has come from the small degree of liberty which the officers of justice have had in the discharge of their duties, by reason of the violence to which they have been subjected, and the part they have been obliged to take in the continual quarrels between the Governor and the Intendant, in so much that justice having been administered by cabal and animosity, the inhabitants have hitherto been far from the tranquility and repose which cannot be found in a place where everybody is compelled to take sides with one party or another."

That rather cynical observer, La Hontan, is disposed to take a hopeful view of the shortcomings of Canadian justice as compared with that meted out in the parent country. He writes, about 1690:

"I will not say that Justice is more chaste and disinterested here than in France; but at least, if she is sold, she is sold cheaper. We do not pass through the clutches of advocates, the talons of attorneys, and the claws of clerks. These vermin do not inhabit Canada yet. Everybody pleads his own cause. Our Themis is prompt, and she does not bristle with fees, costs and charges. The judges have only four hundred francs a year,—a great temptation to look for the law in the bottom of a suitor's purse. Four hundred francs! Not enough to buy a cap and gown; so these gentry never wear them."

So this great paternalistic legal system was pushed as far as it could be through the impenetrable forests, until after Canada fell into the hands of the English,—and never, as a matter of practical administration, touched the little trading and military outposts that had begun to dot the borders of our great inland sea. The rules of the trading companies, the martial law of the feeble garrison chiefs, were there practically the only restraints on the fierce drink-crazed passions of the men of the wilderness, when hate, or fear, or lust, or cupidity brought out the beast that was in so many of them.

An extraordinary instance of the enforcement of justice in the remote region we are considering occurred in 1684, at Sault Ste. Marie. It surpasses in valor and administrative initiative almost any feat of daring that has come down to us from those primitive times. M. du L'hut, while commandant at Michilimackinac at that time, the hero of the enterprise, describes it in a long letter, wonderfully free

from vain-glory, to Count Frontenac, the Governor General of Canada.

In 1683 two French traders left Sault Ste. Marie with a large amount of merchandise. They were murdered by three Indians, from two different tribes, who secreted the bodies and buried the goods in the woods. When du L'hut heard of the outrage, he started for the Sault with a handful of Frenchmen, bent on bringing the guilty men to justice. The country was wild, and teeming with savages, who were bound to resent, with every chance of success, this effort of government on the part of the white man. It was an act of astounding intrepidity.

Du L'hut dispatched a little group of his followers to act as detectives in ferreting out the criminals. They seized a suspected man and his two sons and held them captive until all the guilty ones were determined. When du L'hut arrived at the Sault, he called a council of the Indians of several tribes and harangued them, demanding that they separate the guilty from the innocent, as he did not wish to see the whole nation suffer. The Indians, as might be expected, replied that the Frenchmen had better give up the quest, or they would all be killed. Du L'hut kept on, however, and called several councils, and finally, by a system of confronting the guilty men with evidence of their guilt, (a method which, by the way, runs through French justice even to-day) he convinced even the Indians that he had got hold of the right men.

The question of punishment, however, was a ticklish one, on account of the almost certain retaliation of the Indians. The law demanded that the culprits be taken to Quebec for trial and punishment. To hold them until the weather moderated for that purpose was simply impossible. Du L'hut had to act on his own initiative. All the whites, including the priests, were imploring him to use the utmost leniency, fearing consequences. The letter goes on:

"I then informed them (the Indians) that the Frenchmen having been killed by two different nations, one of each nation must die, and that the same death they had caused the French to suffer, they must also suffer; therefore, they must be shot; that to the third Indian, you sir, (meaning Count Frontenac) would give his life, on condition that he would tell all his allies the great kindness you had done him. I told them that if I did not relax the vigor of our laws, I should put to death all of those who had participated in the theft, and perhaps contributed to the murder by their wicked counsel, but for this time I hoped you would not condemn me for my

mildness. * * * I also reminded them that this was but the fruit of their own teachings; they had taught their youth that to kill a Frenchman was not an act of much importance, since one was acquitted for a captive, or a pack of beaver; for, till now, no more troublesome consequences than these had befallen those who had murdered. But, had they taught their young men that murder was a wicked thing, and, if committed, the nation would abandon them, they would have been more wise and the Frenchmen still be alive." * * *

"An hour after I put myself at the head of forty-two Frenchmen, and in sight of more than four-hundred savages, and within two hundred paces of the fort, I caused the two murderers to be shot.

"The impossibility of keeping them till Spring to send them to you, Sir, made me hasten their death, being persuaded that in such cases prompt execution is necessary to calm all things, and not to give time to ill-minded persons to take measures to get them away from the Indians."

This is the first, and perhaps the only recorded instance of criminal justice in this region pending the French regime. It was certainly a model of efficiency when one takes into consideration the conditions that prevailed.

When peace between Great Britain and France and the Treaty of Paris came in 1763, and England took over the vast territory of Canada, nothing was said about the laws that were to prevail. At Mackinac, at Green Bay, at Detroit, at Sault Ste. Marie, at Vincennes, at St. Joseph, at Kaskaskia, at none of the little posts and portages that fringed our great Lake, did this oversight make any difference in the habits, language, or manners of the people. Between the surrender of the Province and the signing of the treaty—even down to 1774, the time of the passage of what was called the "Quebec Act" of Parliament—the enforcement of law and order, such as it was, remained, as theretofore, in the hands of the fort commandants. No one knew what the law was—and no one cared. You could do this or that, or not, as the commandant willed. Sometimes he was wise and fearless, like du L'hut. Sometimes he was not.

True, on October 7, 1763, George III, by proclamation, divided up his territory and appointed many new governors with power to establish courts and decide cases "according to law and equity, and as near as may be, agreeable to the laws of England, with the right of appeal to the Privy Council," as the language went. But this did

not extend as far as Michigan, Wisconsin, or Illinois, which remained a wilderness beyond the pale, until the Quebec Act, above referred to, in 1774, brought this part of the Northwest Territory within the boundaries of the Province of Quebec. But owing to the extreme dissatisfaction manifested by the French inhabitants with jury trials in civil cases, the Custom of Paris was restored in this region which became known later as the Northwest Territory. Not only the Custom of Paris, but, strange to say, the Roman Catholic Religion was officially declared to prevail. I say strange, because of the British inconsistency thus involved, as Bancroft points out.

Under the Quebec Act, Col. Henry Hamilton, in 1775, was appointed Lieutenant-Governor and Superintendent of Detroit and its dependencies, including the entire North-West Territory, and from that time through the Revolution, Detroit was the center of British power in the Northwest.

Governor Hamilton, as he was called, acted as magistrate in all civil matters under ten pounds. He was harsh and tyrannical to a degree. An orderly sergeant was constable, and there was no process. An order to pay a debt, if not complied with, was followed by a stay in the guard-house until the debt was paid. As an instance of this kind of justice, it is related by the Hon. Charles I. Walker, in an address before the Michigan Pioneer and Historical Society, (to which I am otherwise much indebted) that on one occasion complaint was made to Gov. Hamilton that a debt was due. The debtor was sent for, and on being asked if he had anything to say, said no. He was then ordered to give the complainant an old negro wench in payment of the debt, and she served the creditor for twenty-five years.

Criminal justice was administered by Hamilton and a jury, which was required under the Quebec Act. Sentence of death was sometimes inflicted for theft and other similar offences. Three trials are known to have been conducted before the same jury at one time and disposed of in one verdict. This sort of justice resembles some contemporary record breakers among our own hurry-up judicial officials. A Frenchman was found guilty of stealing furs from a firm of merchants, a former slave of stealing a purse from the same firm, and both were charged with attempting to set fire to the firm's building. The jury trying the cases *en masse*, found they were not guilty on the last charge, "though circumstances were very much against them." This was before Philip Dejean, Justice of the Peace, who sentenced the prisoners to be hanged on the first two charges. When this jurist was afterwards captured in the war, along with

Hamilton, he was dubbed by the Americans, "Grand Judge of Detroit."

Of course, there were justices of the peace at other posts. There appears from the parish register at Mackinac, as is commented on by the Hon. Edward Osgood Brown, of Chicago, in his interesting pamphlet on that subject, the fact that one Adhamer St. Martin occupied the position of Justice of the Peace during both the English and American periods. In 1796, although the Island was theoretically under the United States, he still signs himself as one of the "Justices of the Peace of His Majesty." After that he calls himself, "Justice of the Peace of this District," and later on, in 1797, "Justice of the Peace of the United States."

It must not be supposed, however, that the Northwest settlements, other than Detroit, were measurably affected by the theoretical change in the form of government. French they mostly were, and French they remained, in all their local manners and customs. And a purely local administration of justice was all that they then needed. After French official withdrawal, central governmental control, such as it was, was exercised from Detroit, as we have seen. In the other settlements, locally, military control and martial law continued to be administered by the commandants, and if any occasion arose for the application of legal principles to a situation, the old Custom of Paris was the only law that was at all generally understood.

Finally came the Revolution, and by the Treaty of Peace in 1783, all of what is now Ohio, Indiana, Illinois, Michigan, Wisconsin and Minnesota, passed from the theoretically English, and, except for Detroit, practically French control, to the theoretical dominion of the new United States. The Treaty of Paris and Jay's Treaty in 1795, provided for the surrender of this territory to the United States. The actual delivery, however, was long delayed, and it was not until 1796 that Canada ceased governing, or attempting to govern, the land now embraced in Michigan and Wisconsin.

By the terms of Jay's Treaty, the inhabitants of this region, of whatever nationality, were promised protection in the possession of their property, but were allowed to withdraw, if they chose, within one year. After that they were deemed American citizens. The French and English kept aloof in spirit from the new regime, however, and many of the Canadians, both French and English, were found uniting with the Indians in the capture of Mackinac Island and other places in the War of 1812. The few loyal Americans at Mackinac, Green Bay and Prairie du Chien, were quite at the mercy of the French, the Indians and the British sympathizers.

So far as Illinois is concerned, the capture of Kaskaskia by George Rogers Clark in 1778, in behalf of the State of Virginia, the creation of the County of Illinois, and the re-establishment of a court at Cahokia, which endured until Virginia ceded this territory to the United States in 1784, must not be overlooked. This region, although a bit removed from the Lake Michigan territory, is rich and significant in one respect. In 1905, the almost complete records of the court at Cahokia from 1779 to 1790, besides fragmentary records covering some of the Kaskaskia court records during part of the French regime from 1737 to 1765, were located by Professor Clarence W. Alvord of the University of Illinois. The Cahokia record is of great interest. It appears in full in volume II of the Collections of the Illinois State Historical Library. The cases are mostly concerned with the trivial differences of a small community—actions on notes, claims for wages, horse-trades, damages done by escaped pigs and other livestock, troubles with negro slaves, etc. The judges, of which there were several, sat *en banc*. Jury trials were extremely rare. The proceedings were all in French, and French names predominate. Whenever any law is cited, which was extremely rare, it was the "Custom of Paris." Even the Congressional Ordinance of 1787, which declared the English common law throughout the Northwest Territory, made an exception of this region, and permitted the Custom of Paris in some respects at least, to continue.

Perhaps it would be illuminating to give in full a typical case, as it appears in the admirable translation.

"At a Court, Friday, February 4, 1780.

President, M. Trottier.

M. Gratiot.

M. Girardin.

M. Martin.

M. Bte. Sausier.

Present.

Jean Bte. LaCroix, Plaintiff, vs. Bte. Saucier, Defendant.

The plaintiff sues the defendant on a note of one hundred and eighty-one *livres* ten *sols* in peltries, which should be paid him in peltries, or flour.

The defendant shows that he had proposed on several occasions the payment of the said note in peltries and that the plaintiff refused it, saying that the defendant had promised him wheat.

The defendant had in fact promised him wheat, yet only in case that he should not be able to obtain peltries at the maturity of the said note.

The court decreed that the defendant should pay the note according to its terms on the demand of the plaintiff."

Perhaps we find here the germ of that unique provision of the Illinois Statutes which declares notes payable in commodities to be negotiable under certain conditions.

The following case of contempt of court is interesting:—

"Francois Saucier brought complaint against Ignace Chatigny for an insult which he had offered to the Court, having said that all the magistrates were fools.

Ignace Chatigny appeared and said that it was true that he had said it, but he had not thought it would be repeated.

The court decided that on account of the insult which had been offered it by the said Ignace Chatigny, it will make application to M. Trottier, Commandant in said place, to have him put in prison for a week; and then he shall pay fifty *livres* to the church, and the costs."

The method of referring cases to arbitrators appears in many instances, which is of interest as an important part of the French law. In 1785, the court, on account of there being neither crops nor money in the community, decreed a kind of moratorium as to judicial sales, requiring the creditor to take seized goods at an appraised value if he refuse to allow the debtor time, with interest.

An entire paper could be written on this extremely interesting record, but our present subject is too large, though the field here is indeed tempting.

It is well to note, in connection with the Ordinance of 1787, for the Northwest Territory, that this was the first practical governmental recognition for this region of those institutions that lie at the basis of our civil rights of to-day. In the establishment of the rights of *habeas corpus*, trial by jury, exemption from cruel or unusual punishment, and from deprivation of liberty or property without due process of law, the provisions for uniformity of taxation and the prohibition of involuntary servitude or slavery, except as a punishment for conviction of crime, we readily find the germ of most of our state bills of rights and constitutions.

It is curious to observe, three years after the passage of this Ordinance of 1787, actual possession not yet having been taken of this part of the Northwest Territory, the Council of Upper Canada

establishing for Detroit in the District of Hesse, as it was called, on petition of many of her citizens, to Lord Dorchester, a Court of Common Pleas, a Court of Probate and a Superior Court of Civil and Criminal jurisdiction.

The last term of court under British authority in Detroit was held in January, 1796. In August of the same year, the region having been finally taken possession of as part of the Northwest Territory, the County of Wayne of the Northwest Territory was created, embracing all of the Southern Peninsula. It had its common pleas court, following the Canadian plan, and the Territorial Supreme Court held sessions at Detroit yearly. In 1803, the Michigan region became part of Indiana Territory temporarily, and in 1805, Michigan Territory, including what is now Wisconsin, was formed, which endured until after the War of 1812, when formal possession of this region was taken by the United States troops; and from 1816 to 1824, Michigan and Wisconsin, comprising Michigan Territory, enjoyed the nominal protection of the American flag. Little care was, or could be, in the nature of things, actually exercised. The rule continued to be, as it always had been under the two preceding governments, essentially military. There was much tyranny and oppression on the part of the military martinets in charge of the forts, but so far as possible, and ever since the Ordinance of 1787, the English Common Law prevailed generally in the Northwest Territory as the real fundamental law of the land.

Very early in the century, however, a Supreme Court had been established at Detroit for the Territory of Michigan, which included, as stated above, the subsequent State of Wisconsin. This court consisted of three judges, who held sessions twice a year. Criminals had to be conveyed there and controversies involving large amounts occasionally reached this tribunal. But the distance, expense and difficulties of travel were so great that the rest of the territory, except in that immediate vicinity, derived but little benefit from that source. Besides this Supreme Court, there were three "County Courts," held by three judges, none of whom were lawyers, and of very limited jurisdiction. In 1823, Congress provided for an "Additional Judicial District," comprising substantially all of the Western and Northern shore of the Lake, and the Hon. James D. Doty was appointed judge, a man of high character and ability, who served for about nine years. Not until then was a citizen really assured of the protection of the constitution in this general region.

General Albert G. Ellis, one of Wisconsin's pioneers, has furnished, in the admirable Wisconsin Historical Collections, (to which

I am much indebted for a great deal that follows in this paper) an account of his visit to the Court at Detroit in 1821. He writes:

"The Court was in session,—at the Council House, which was made of poles set on end, and the joints filled in with lime-mortar. The whole building may have been fifty feet in length, twenty-four feet in width, and ten to the roof in height. Curious to witness the dispensation of justice in those ends of the earth, I ventured into the august presence. The whole Court consisted of his Honor, Judge Witherell, three lawyers and as many suitors; juries not having travelled so far towards sunset. One of the counsel, a Mr. Bidle, was discussing some obscure question, involving title to land; the Court seemed in much perplexity; the opposing counsel only made darkness more visible. The lawyers at length paused for the decision from the bench. It was in the afternoon of one of the hottest days in June; the Court room seemed in a broil,—the Judge being the chief victim. He wiped the perspiration from his naked poll with no seeming relief; at length, rising with much dignity, he proceeded, not to a decision of the case, but deliberately to the door of the council-room, and without explanation of any kind, marched into the street, and thence to the wharf at the River, and sitting down with his feet over the water, having on neither hat nor coat, amused himself for an hour or more throwing sticks and pebbles at the fishes. Having at length apparently cooled his head, and quieted his nerves, he rose and with the same deliberation observed in his egress, returned to the court-room and resumed his seat. The suitors and counsel, being probably accustomed to his moods, had all quietly maintained their places during recess, and were ready for a resumption of the case. The Judge, as if nothing unusual had happened, proceeded to give his decision, which, if it did not please both parties, evidently satisfied them, as immediate acquiescence followed. I learned that with all his eccentricities, he failed not of securing the confidence of the people, both of the bar and the suitors."

By 1824, the essentially military rule had given way to a more orderly conduct of the courts and administration of the law. The Justice Courts, however, being practically the first and only courts available to the denizens of the outposts, were crude and preposterous in the extreme.

The Justice of the Peace, of whom most tales are told in the early period of the United States dominion, was Justice Charles Reaume of Green Bay. His judicial career extended from some early date in the century down to 1826. He was an extraordinary character. He served to fit in with and bridge over what was regarded as an innovation on the settlers' primitive rights which the gradual extension of a new jurisprudence was bringing upon them. The Constitution and territorial laws seemed like serious infringements of their long established customs. They did not care for courts and lawyers. To such matters as the whipping post and the sale of offenders into short periods of servitude, they fondly clung. Reaume represented the old regime. His native tongue was French—and he took very unkindly to the fast growing prevalence of the English language. The only law he knew came out of the Custom of Paris. And although the government under which he lived had three times changed, it is doubtful if he ever knew that the law of his young manhood had been superseded by the English common law and by the Constitution and laws of the United States. And so he administered justice generally according to the Custom of Paris, which was at least comprehensible to the most of those who were haled before his bar.

How and when he obtained his commission is somewhat wrapped in obscurity. The late Judge Henry S. Baird of Green Bay, tells the Wisconsin Historical Society that Reaume probably got his commission from some Territorial Governor. Some say it was from George III. Others that Governor Harrison of Indiana Territory issued the authority, sometime about 1807. Still another account has it that he obtained his first judicial commission from the authorities at Detroit, somewhat earlier, before the Treaty of Peace. At any rate, he, for many years, became the sole arbiter of justice at Green Bay, without any authority other than the tacit assent of the people of that neighborhood. The county seat was so far distant, and the difficulties and expense of travel so great, that resort was had to Reaume's court every time litigation arose. He practically was the Supreme Court of the country, and was extremely arbitrary in his decisions.

He was born about 1752 at La Prairie, opposite Montreal, of a respectable family. He served as Captain in the British Indian department at Detroit. In 1790 he came to Green Bay. He dispensed justice in an old red military coat and cocked hat, and an enormous assumption of dignity.

Mrs. Kinzie, wife of our own John Kinzie, gives the following instance of Judge Reaume's method of administering justice:—

"There was an old Frenchman at 'the Bay' named Reaume, excessively ignorant and grasping, although otherwise tolerably good-natured. The man was appointed Justice of the Peace. Two men once appeared before him, the one as plaintiff and the other as defendant. The Justice listened patiently to the complaint of the one and the defense of the other; then rising with dignity, he pronounced his decision: 'You are both wrong. You, Boisvert,' to the plaintiff, 'You bring me one load of hay; and you, Crely' to the defendant, 'You bring me one load of wood; and now the matter is settled.' It does not appear that any exceptions were taken to the verdict."

Hon. James H. Lockwood, afterwards Justice of the Peace at Prairie du Chien, gives the following anecdote:

"During my stay at Green Bay, awaiting the arrival of my employers, one of their 'engagees' or boatmen had left their employ and engaged himself to an American concerned in sutling for the troops, and I went to Judge Reaume, stating the case to him, and asked him what the law was on that subject, and what could be done. He answered me in his broken English: 'I'll make de—man—go—back—to—his—duty.' 'But,' I again asked, 'What is the law on the subject?' He answered, 'De—law—is—I'll—make—de—man—go—back—to—his—duty.' I reiterated my inquiry. 'Judge Reaume, is there no law on the subject?' He replied with a feeling of conscious dignity, 'We—are accustomed—to—make—de—men—go—back—to—their *devoirs*.'"

Col. Ebenezer Childs, of La Crosse, another pioneer, offers the following:

"There was a noted case brought before him by a young lady for seduction and breach of marriage promise. After hearing the testimony, the honorable court rendered judgment in this wise,—the seducer was sentenced to purchase a calico dress for the injured lady, and two dresses for the baby, and the constable to pay the costs by splitting a thousand rails for the Judge. The decision of the Court was complied with, though the constable was not well pleased with the

part assigned to him,—not being able exactly to comprehend why he should be mulcted in damages; but at length agreed to split the rails on condition that the Judge should board him while doing so.”

Still another story from a prominent early citizen, Augustin Grignon, which, he relates, was told him by John Dousman, an early character in the region:

“Joseph Houll was the complainant and his claim, which was a just one, was for labor rendered the defendant. It was a plain case, and Reaume decided in favor of Houll, and dismissed the parties. Dousman having heard so much about Reaume's singular decisions, concluded he would test the good Justice and observed, with assumed sincerity, ‘Mr. Reaume, now that you have decided the case, I must say I am very much surprised at your decision—you ought in justice to have decided in favor of the defendant.’ ‘Ah,’ replied Reaume, ‘you did not understand me aright.’ And then stepping to the door he called Houll back and asked him how he understood the decision. Houll, of course, said that he understood he had *won*. ‘Yes,’ said Reaume, ‘you have *won to pay the costs*.’”

Judge Henry S. Baird relates in his address before the Wisconsin Historical Society a Reaume experience of a friend of his who had been sued by a Frenchman on an account. He reached the court two hours after the return time of the summons, but thought to take along a bottle of old whiskey.

“On entering the presence chamber, he found the cause decided against him,—the plaintiff exultant in his success—the Judge rigid and dignified. The defendant had defied his authority and disobeyed his mandate.”

The anecdote describes how the Judge was finally persuaded to come into the next room and liberally sample the contents of the bottle. This argument soon won a new trial, and on returning to the court room, the surprised plaintiff was compelled to testify again, and the former judgment reversed and entered against the plaintiff. Against his remonstrance the Judge coolly declared that “*his first decision was only that the plaintiff should win for to lose.*”

Grignon, however, sums up the character of this notable cadi of the wilderness with probably accuracy, thus:—

“Judge Reaume was rather tall and quite portly, with a dark eye, and a very animated, changeable countenance. Like the Indians, his loves and hates were strong, particularly the hates. He was probably never known to refuse a friendly dram of wine, or of stronger liquors, and he was in truth very kind, and very hospitable. With all his eccentricities, he was warmly beloved by all who knew him.”

Judge Reaume's continued administration of the “Custom of Paris” under English and finally United States' dominion, must have undergone *some* modification, for there exists now among the Wisconsin Historical Society collection a single volume of Blackstone which belonged to the Judge, and it is said constituted the sole law library of the time in Wisconsin,—with the exception of that of Justice Nicholas Boilvin, who was Indian sub agent and Justice of the Peace at Prairie du Chien. This consisted of one volume of the old statutes of the Northwest Territory, one of Illinois Territorial Statutes, and one of the Missouri Territory. Like Judge Reaume, he used his own notions of right and wrong in preference to any written law. Mrs. Kinzie relates the following in her book “Wau-bun.”

“Col. Boilvin's office was just without the walls of the fort at Prairie du Chien, and it was much the fashion among the officers to lounge in there of a morning, to find sport for an idle hour, and to take a glass of brandy and water with the old gentleman, which he called taking a little ‘quelque-chose.’ A soldier named Fry had been accused of stealing and killing a calf belonging to M. Rolette, and the constable, a bricklayer of the name of Bell, had been dispatched to arrest the culprit and bring him to trial. While the gentlemen were making their customary morning visit to the Justice, a noise was heard in the entry, and a knock at the door.

‘Come in,’ cried the old gentleman, rising and walking toward the door.

Bell—Here, sir, I have brought Fry to you as you ordered.

Justice—Fry, you great rascal! What for you kill M. Rolette's calf?

Fry—I did not kill M. Rolette's calf.

Justice—(shaking his fist). You lie, you great rascal! Bell, take him to jail. Come, gentlemen come, *let us take a leetle quelque-chose.*"

The matter of marriage and divorce underwent some interesting phases in the wilderness. The Custom of Paris, which, as we have seen, over-lapped not only the British, but the American control to a certain extent, provided that a contract in writing be entered into at the time of the marriage, giving all property to the survivor, if there was no issue. If there was no priest, the parties went before the magistrate, or the Commandant, as the case might be. If a divorce was desired, the man and woman went together to the magistrate, told him what they wanted, and he then tore up the contract in their presence and thus effected the divorce. When the Territorial laws of Michigan finally came into force, the people were persuaded with much difficulty that this written contract was no longer necessary, and resented the overthrow of their belief that went with it, that because the contract gave the property to the survivor, it was therefore not necessary to pay the debts of the deceased.

Fragmentary as this treatment is, and fragmentary as, indeed, the administration of justice was, in this region in early times, we cannot leave the subject without some reference to justice among the Indians, who constituted for years the largest part of the population. Among the Indians themselves there was no justice, nor officers of the law. The punishment of murder, that was frequent, was left to the relations of the deceased. They killed the murderer, his chief, or the parents of the murderer, at their leisure, and purely as a matter of revenge.

The murder of Indians by white people we hear little about—as is always the case when a white dominant race is seeking ascendancy over a race of lower order. But when an Indian murdered a white person, from the days of du L'hut down, as soon as there was any justice to be had, the law was rigorously invoked, if it were possible, as was not often so, to apprehend the murderer. In 1821, Dr. William S. Madison, an army surgeon, on his way East from Green Bay, was murdered by a Chippewa Indian, who was detected and given up by his tribe. In 1820, a Frenchman had been killed by a Menominee Indian in the same region. Both were given trial in Detroit in 1821 and executed.

The first term of Judge Doty's new Judicial District Court in 1823 was held at Green Bay and the Grand Jury brought in thirty-six true bills against the inhabitants for fornication and two for

adultery. Col. Childs, who relates this, says he was a witness in eighteen of these, besides being a member of the jury. Finally his brother jurors asked him to withdraw; but, as he says, they were unable to find any testimony against him, and so he was soon called back. The Court let off all but two, on presenting marriage certificates in ten days—and those two stood trial, insisting they were legally married, after the Indian fashion, and had large families. They were each fined fifty dollars. Col. Childs adds: "We all thought at the time Judge Doty was rather hard in breaking in roughshod, as he did, upon our arrangements." Henry S. Baird was appointed prosecuting attorney and was also the first lawyer to practice at Green Bay,—in fact, in any part of Wisconsin Territory west of Lake Michigan. Col. Childs served as Sheriff until Wisconsin Territory was formed in 1836,—and insists that two executions for murder, by him, were the first and last ever had in all that part of Wisconsin.

Whether or not that may have been true of Brown County, it was still more true of Mackinaw County. We find Judge Doty writing from there in 1823:

"At this term of the Court, there have been several trials and much more business than could have been expected. An Indian was indicted for the murder of another Indian; he was tried and acquitted. On the trial, a question arose as to the admissibility of evidence. When the act was committed, there were three or four Indians only present, and not a single white person. I was at a loss, on the rules laid down, whether these Indians could be admitted as witnesses; from the situation of the country, you will at once see that it is a question of considerable importance. One of the witnesses (a woman) stated that she believed there was a Great Spirit,—that there were places appointed for those who conducted well, and for those who conducted badly—that the eye of the Great Spirit was continually upon her, and that, if she told a lie about the murder, before the court, she would be after death sent to the bad place, and there punished for it. Under a solemn injunction to tell the truth, I permitted her to make her statement to the jury, at the same time instructing them to place such dependence only on it as it might seem to merit. All of the others would not say whether they believed in anything. * * * These witnesses were all rejected."

In 1828, in the County of Crawford, two more Indians were tried for murder before Judge Doty. Great trouble was had to get

them executed, as the Sheriff had not given bond and so was not qualified. The Governor asked and obtained a respite from execution from Judge Doty, and on the papers being forwarded to the President, the Indians were pardoned.

With the sloughing off of Wisconsin from Michigan Territory in 1837, and the simultaneous admission of what was left of Michigan as a State, we must assume the passing away of the old order of things in the administration of justice. The period of over two hundred years of primitive conditions that I have sought in a very sketchy sort of way to cover, really presents a most astonishing contrast in the successive systems of justice that were theoretically supposed to protect the rights and liberties of the inhabitants of this region. The Colonial paternalism of the French, superimposing the essence of a highly developed civilization upon the dense wilderness, was absurdly inappropriate. It might as well have been no system of justice at all, so far as this Lake Region was concerned. The settlements, far separated, primitive in the extreme, and inhabited by men of primal passions in constant contact with savage tribes, needed no law, except such as they individually could invoke and enforce. Freed from the restraining leash of the elaborate system at Quebec, they represented society, in its most naked state. Hand in hand with this anarchistic trade-spirit was the brave Jesuit influence that struggled almost unaided against, and to some extent tempered, the lawlessness of the woods.

But somehow, some way, this intense French civilization made a deeper impress upon the Indians than any other race has ever done, and this fact more than anything else, rendered so slow and difficult the progress of the succeeding English dominion, with its almost entire absence of any attempt to establish a legal system of justice, except through military force. The English came by conquest upon these sparse communities, saturated with lawlessness,—yet obedient to law when enforced—and firmly established in savage sympathy. The rule of force was the only way. And when gradually this gave place to something like the semblance of legal procedure, there is little wonder that we find the descendants of these native-born Frenchmen still clinging to the Custom of Paris in preference to a common—law, whose traditions and origin were as naught to them.

From the Treaty of Paris down to the creation of this region into states of the American Union,—the territorial era, that is,—we find the formative period of the administration of justice in these parts. Crude, ineffective, ridiculous in many ways as it was, it presents a striking picture of the gradual triumph of law and order as an in-

dispensable ingredient in the growth of a prosperous country. We can live as the savages—and remain as the savages. But if we would grow great, it must be with the aid of a settled system of jurisprudence that is not superimposed from without, but is drawn from within, out of the customs, temper and vital needs of the people.

The wonder of it all lies in the extraordinary nearness of those crude times to our own. It is but a step back into the previous century, when the judicial Doty, and the absurd Reaume, and the eccentric Witherell were holding their courts—almost within the memory of living men. Another century back sees the military law of the out-post commandants, ruling with unfettered tyranny over the primitive passions of adventurous men. Back of that, the wash of the waves, the wind in the trees, the vengeful war-whoop of the savage, the prayers of the priests, were all the wilderness knew of those rules of human conduct that constitute the administration of justice. It could not know for it could not see, that dim, uncertain distant light of judicial authority that so inadequately wavered and flickered on the Rock at far Quebec. Not with the march of martial men, not with the flow of peaceful population, not with the conquest of savage power, but from the needs that sprung after these forces had cleared the forests and established what is known as civilization, was finally evolved that permanent law of the land that makes for righteousness and secures for future generations the liberties and protection of the people of this great and prosperous Middle West.

GEORGE PACKARD.

Chicago.